

FEDERAL ELECTION COMMISSION

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COMMISSION

FIRST GENERAL COUNSEL'S REPORT

2016 DEC 14 PM 3: 02

MUR: 7064

DATE COMPLAINT FILED: 05/13/2016

DATE OF NOTIFICATION: 05/17/2016

LAST RESPONSE RECEIVED: 08/09/2016 GELA

DATE ACTIVATED: 09/15/2016

ELECTION CYCLE: 2016

EXPIRATION OF SOL: 01/29/2021 – 04/13/2021

COMPLAINANT:

Aaron Hedlund

RESPONDENTS:

Patriots for America and Adam C. McLain in his
official capacity as treasurer
Adam C. McLain
Franklin and Lee, Inc.

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104

52 U.S.C. § 30122

11 C.F.R. § 100.5(a)

11 C.F.R. § 102.1(d)

11 C.F.R. § 104.1(a)

11 C.F.R. § 110.4(b)

INTERNAL REPORTS CHECKED:

Disclosure Reports

AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Patriots for America ("Patriots") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by failing to report certain receipts and disbursements.¹ The Complaint also alleges that Franklin and Lee, Inc. ("Franklin and Lee"), Patriots' sole contributor, made contributions in the name of another.² Patriots appears to have inadvertently reported contributions on the wrong line of a report, a technical violation that it later corrected, so we recommend that the Commission dismiss the reporting allegation. We also

¹ Compl. at 1-3.

² *Id.*

1 recommend that the Commission dismiss the name of another allegation based on the unusual
2 facts here. Patriots, a federal independent-expenditure-only committee, focused its activity on a
3 state election, so we do not believe further use of Commission resources is warranted regarding
4 this allegation. We therefore recommend that the Commission dismiss the allegations and close
5 the file.

6 II. FACTUAL BACKGROUND

7
8 Patriots registered with the Commission as an independent-expenditure-only committee
9 on November 5, 2015.³ According to its website, Patriots' sole goal was to oppose the candidacy
10 of Eric Greitens, a candidate in the Missouri Republican gubernatorial primary in 2016.⁴ The
11 Complaint includes a number of Patriots' internet advertisements, direct mailers, webpages, and
12 YouTube video screenshots, all of which relate to Greitens or the Missouri gubernatorial race.⁵
13 Patriots' activity occurred prior to the August 2, 2016, primary election.⁶ While Patriots'
14 disclosure reports and other available information indicate that its activity has been solely at the
15 state level, it has nonetheless registered with and reported to the Commission.⁷

³ FEC Form 1, Statement of Organization, Patriots for America (Nov. 5, 2015), available at <http://docquery.fec.gov/pdf/861/201511060300031861/201511060300031861.pdf>.

⁴ See <http://www.ericgreitens.com/> ("We DO NOT support or endorse any particular candidate in any state gubernatorial race, we are only opposed to one: Eric Greitens, who seeks to deceive voters and misrepresent his liberal ideology as 'new conservative' values.") (emphasis in original). Greitens won the gubernatorial primary and general elections. At the time of this report, Patriots' website was still operational.

⁵ Compl., Exs. A-E.

⁶ See 2015 Year-End Report, Patriots for America (Jan. 29, 2016); 2016 October Quarterly Report, Patriots for America (Oct. 14, 2016). According to the October Quarterly Report, Patriots' latest disbursement during that reporting period occurred on August 19, 2016. Patriots disclosed no activity on its 2016 Post-General Report.

⁷ The Missouri Ethics Commission's ("MEC") campaign finance database indicates that Patriots has not registered with the MEC, and a complaint was reportedly filed with the MEC alleging that Patriots was required to register with that agency because it spent more than \$1,500 on expenditures in connection with a Missouri state election. See <http://static.politico.com/40/97/9b7cc791445da70c99e20b52211e/mec-complaint-filed-against-patriots-for-america.pdf>.

1 The Complaint first alleges that Patriots failed to disclose receipts or disbursements in its
2 2015 Year-End Report, despite making disbursements during that year.⁸ The Complaint includes
3 several communications to support its claim that Patriots made disbursements "on or about
4 November 2015."⁹ The Complaint reasons that because Patriots made disbursements in 2015
5 that it must have also accepted receipts during that year.¹⁰ Patriots, however, disclosed only
6 debts totaling \$86,224 owed to three creditors: \$56,234.89 to Draper Sterling, LLC, ("Draper
7 Sterling") for business consulting;¹¹ \$10,000 to Adam C. McLain ("McLain"), Patriots'
8 treasurer, for research; and \$19,989.11 to Semcasting, Inc., for digital advertising.¹² The
9 Complaint questions how Patriots could owe a vendor for digital advertising without having
10 made a disbursement for digital advertising.¹³

11 The Complaint also alleges that Patriots' 2016 April Quarterly Report listed no
12 contributions, but showed \$84,250 in "other federal receipts."¹⁴ These receipts all came from
13 Franklin and Lee,¹⁵ a Virginia-based 501(c)(4) that was founded by McLain.¹⁶ The Complaint
14 alleges that Franklin and Lee is registered at the same Virginia residential address as Patriots and

⁸ Compl. at 1-2; *see also* 2015 Year-End Report, Patriots for America (Jan. 29, 2016).

⁹ Compl. at 1-2, Exs. A-E.

¹⁰ *See id.* at 1-2.

¹¹ Draper Sterling was incorporated in Delaware on December 2, 2015. *See* <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>.

¹² 2015 Year-End Report, Sched. D., Patriots for America. The available information indicates that Patriots also sent direct mail through the United States mail, which is not reflected in this description. *See* Compl., Ex. B.

¹³ Compl. at 2.

¹⁴ *Id.*; 2016 April Quarterly Report, Patriots for America (Apr. 13, 2016).

¹⁵ *See id.*

¹⁶ *See* Resp. of Patriots for America and Adam McLain in his capacity as treasurer ("Resp. of Patriots for America") at 4-5 (Sept. 2, 2016); State of Delaware Certificate of Incorporation, Franklin and Lee, Inc. (Dec. 18, 2015).

1 was formed three weeks before it began contributing to Patriots.¹⁷ The Complaint questions how
2 Patriots was able to acquire \$84,250 in other federal receipts when it otherwise had not received
3 any contributions.¹⁸ The Complaint further alleges that Franklin and Lee is a shell organization
4 that was formed to obfuscate Patriots' donors.¹⁹

5 Patriots responds that its 2015 Year-End Report was accurate and that Patriots received
6 no receipts or disbursements in 2015.²⁰ Patriots admits that its 2016 April Quarterly Report
7 contained an "administrative error" because it reported the \$84,250 it received from Franklin and
8 Lee during that quarter on the line for other federal receipts (line 17) instead of the line for
9 contributions (line 11(a)).²¹ Patriots corrected the error after the Complaint was filed.²²

10 Franklin and Lee's Response asserts that the Commission lacks jurisdiction over it
11 because the Complaint did not name it as a respondent, does not allege facts that show that it
12 violated the Act, and does not provide sufficient notice of the allegations against it.²³

13 **III. LEGAL ANALYSIS**

14 **A. Alleged Reporting Violations**

15 Political committees registered with the Commission must file reports disclosing their
16 receipts and disbursements.²⁴ The Complaint first alleges that Patriots failed to report its receipts
17

¹⁷ Compl. at 2-3.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 2-3.

²⁰ See Resp. of Patriots for America at 2.

²¹ See *id.*

²² See *id.*; Amend. 2016 April Quarterly Report, Patriots for America (July 12, 2016).

²³ Resp. of Franklin and Lee, Inc. (Aug. 8, 2016).

²⁴ See 11 C.F.R. § 104.3. See also 52 U.S.C. § 30104.

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1 and disbursements during 2015.²⁵ Patriots' 2015 Year-End Report discloses that all of Patriots'
2 2015 activity was financed on credit.²⁶ Schedule D from that report named each creditor,
3 identified the amount that Patriots owed that creditor, and briefly described each debt.²⁷ In 2016,
4 Patriots disclosed contributions from Franklin and Lee,²⁸ which were used to pay most of that
5 debt.²⁹ The available information thus does not show that Patriots' 2015 activity was unreported.

6 By contrast, Patriots' original 2016 April Quarterly Report incorrectly reported Patriots'
7 contributions, totaling \$84,250, as "other federal receipts."³⁰ Patriots has since amended the
8 report to show the receipts as contributions.³¹ In light of the fact that Patriots disclosed the
9 activity, albeit on the wrong line, and later corrected the error, we recommend that the
10 Commission exercise its prosecutorial discretion to dismiss the reporting violation.³²

11 **B. Alleged Contributions in the Name of Another**

12 The Act prohibits a person from making a contribution in the name of another, knowingly
13
14 permitting his or her name to be used to effect such a contribution, or knowingly accepting a

²⁵ See Compl. at 2.

²⁶ 2015 Year-End Report, Patriots for America.

²⁷ *Id.*, Sched. D. See 52 U.S.C. § 30104(b)(8); 11 C.F.R. § 104.3(d).

²⁸ See Amend. 2016 April Quarterly Report, Patriots for America (July 15, 2016).

²⁹ Patriots' Post-General Report shows that it still owes a \$2,234.89 debt to Draper Sterling.

³⁰ See April Quarterly Report at 3, Line 17, Patriots for America (Apr. 13, 2016); Resp. of Patriots for America at 2.

³¹ See Amend. 2016 April Quarterly Report, Patriots for America (July 12, 2016).

³² See *Heckler v. Chaney*, 470 U.S. 821 (1985). Patriots' reporting information on the wrong line of its disclosure report would not meet any Reports Analysis Division referral threshold. See Reports and Analysis Division Review and Referral Procedures for the 2015-16 Election Cycle, *Unauthorized Committees, Title 52 Authorized Committees and Title 26 Authorized Committees*, Standard 7.

The Complaint also alleges that Patriots' \$56,234.89 debt to Draper Sterling for business consulting is "highly unusual" given Patriots' status as an independent-expenditure-only committee with no money, and alleges that the report on that transaction was either misleading or wrong. Such alleged "unusual" activity, with nothing more, does not provide sufficient reason to believe that Patriots reported false or misleading information.

1 contribution made by one person in the name of another person.³³ The term “person” for
2 purposes of the Act includes partnerships, corporations, and other organizations.³⁴ The
3 Complaint alleges that the contributions to Patriots from Franklin and Lee were made in the
4 name of another because Franklin and Lee is a shell organization being used to conceal the
5 names of Patriots’ contributors.³⁵

6 The facts here are unusual—Patriots registered and reported to the Commission, despite
7 focusing its activity solely on a state election, and did not register with or report to the state of
8 Missouri.³⁶ Further, Patriots financed its initial activity on credit and then paid its debt after
9 receiving contributions from one contributor, Franklin and Lee,³⁷ an entity formed by Patriots’
10 treasurer whose first contribution to Patriots was made less than three weeks after it
11 incorporated.³⁸

12 Nonetheless, we do not believe that this matter warrants further action by the
13 Commission. The Act’s prohibition on contributions in the name of another applies to
14 independent-expenditure-only political committees regardless of how the contributed funds are
15 spent. However, because Patriots spent its funds on a state, not a federal, election, we
16 recommend that the Commission dismiss the allegation that the Respondents violated 52 U.S.C.

³³ 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b).

³⁴ 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10.

³⁵ Compl. at 2-3.

³⁶ *See supra* n.7.

³⁷ *See* 2015 Year-End Report, Patriots for America; Amend. 2016 April Quarterly Report, Patriots for America (July 15, 2016).

³⁸ *Compare* State of Del. Certificate of Incorporation, Franklin and Lee, Inc. (Dec. 18, 2015) with Amend. 2016 April Quarterly Report at 6, Patriots for America (July 15, 2016) (reporting that Franklin and Lee made its first contribution to Patriots on January 7, 2016, in the amount of \$23,000).

§ 30122.³⁹ See RR 12L-12 (Our Future Ohio PAC) (Commission declined to open a MUR where the independent-expenditure-only political committee supported only state candidates).

IV. RECOMMENDATIONS

1. Dismiss the allegations that Patriots for America and Adam C. McLain in his official capacity as treasurer violated 52 U.S.C. §§ 30104 and 30122;
2. Dismiss the allegation that Adam C. McLain in his individual capacity violated 52 U.S.C. § 30122;
3. Dismiss the allegation that Franklin and Lee, Inc., violated 52 U.S.C § 30122;
4. Approve the attached Factual and Legal Analysis;
5. Approve the appropriate letters; and
6. Close the file.

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Acting Associate General Counsel for Enforcement

Dec. 14, 2016
Date

Stephen Gura *by MA*
Stephen Gura
Deputy Associate General Counsel

Mark Allen
Mark Allen
Assistant General Counsel

Christopher L. Edwards
Christopher L. Edwards
Attorney

Attachment:
Factual and Legal Analysis

³⁹ We believe that because Patriots focused its activity at the state level, the MEC is the most appropriate agency to address it. The Complainant in the matter filed a complaint with the MEC, *see supra* n.7, so we do not believe it is necessary to report this matter to the MEC. See 52 U.S.C. § 30107(a)(9).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Patriots for America and Adam C. McLain in his
official capacity as treasurer
Adam C. McLain
Franklin and Lee, Inc.

MUR 7064

I. INTRODUCTION

The Complaint alleges that Patriots for America ("Patriots") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by failing to report certain receipts and disbursements.¹ The Complaint also alleges that Franklin and Lee, Inc. ("Franklin and Lee"), Patriots' sole contributor, made contributions in the name of another.²

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Patriots registered with the Commission as an independent-expenditure-only committee on November 5, 2015.³ According to its website, Patriots' sole goal was to oppose the candidacy of Eric Greitens, a candidate in the Missouri Republican gubernatorial primary in 2016.⁴ The Complaint includes a number of Patriots' internet advertisements, direct mailers, webpages, and YouTube video screenshots, all of which relate to Greitens or the Missouri gubernatorial race.⁵

¹ Compl. at 1-3.

² *Id.*

³ FEC Form 1, Statement of Organization, Patriots for America (Nov. 5, 2015), available at <http://docquery.fec.gov/pdf/861/201511060300031861/201511060300031861.pdf>.

⁴ See <http://www.ericgreitens.com/> ("We DO NOT support or endorse any particular candidate in any state gubernatorial race, we are only opposed to one: Eric Greitens, who seeks to deceive voters and misrepresent his liberal ideology as 'new conservative' values.") (emphasis in original). Greitens won the gubernatorial primary and general elections.

⁵ Compl., Exs. A-E.

1 Patriots' activity occurred prior to the August 2, 2016, primary election.⁶ While Patriots'
2 disclosure reports and other available information indicate that its activity has been solely at the
3 state level, it has nonetheless registered with and reported to the Commission.⁷

4 The Complaint first alleges that Patriots failed to disclose receipts or disbursements in its
5 2015 Year-End Report, despite making disbursements during that year.⁸ The Complaint includes
6 several communications to support its claim that Patriots made disbursements "on or about
7 November 2015."⁹ The Complaint reasons that because Patriots made disbursements in 2015
8 that it must have also accepted receipts during that year.¹⁰ Patriots, however, disclosed only
9 debts totaling \$86,224 owed to three creditors: \$56,234.89 to Draper Sterling, LLC, ("Draper
10 Sterling") for business consulting;¹¹ \$10,000 to Adam C. McLain ("McLain"), Patriots'
11 treasurer, for research; and \$19,989.11 to Semcasting, Inc., for digital advertising.¹² The
12 Complaint questions how Patriots could owe a vendor for digital advertising without having
13 made a disbursement for digital advertising.¹³

⁶ See 2015 Year-End Report, Patriots for America (Jan. 29, 2016); 2016 October Quarterly Report, Patriots for America (Oct. 14, 2016). According to the October Quarterly Report, Patriots' latest disbursement during that reporting period occurred on August 19, 2016. Patriots disclosed no activity on its 2016 Post-General Report.

⁷ The Missouri Ethics Commission's ("MEC") campaign finance database indicates that Patriots has not registered with the MEC, and a complaint was reportedly filed with the MEC alleging that Patriots was required to register with that agency because it spent more than \$1,500 on expenditures in connection with a Missouri state election. See <http://static.politico.com/40/97/9b7cc791445da70c99e20b52211e/mec-complaint-filed-against-patriots-for-america.pdf>.

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¹² 2015 Year-End Report, Sched. D., Patriots for America. The available information indicates that Patriots also sent direct mail through the United States mail, which is not reflected in this description. See Compl., Ex. B.

¹³ Compl. at 2.

1 The Complaint also alleges that Patriots' 2016 April Quarterly Report listed no
2 contributions, but showed \$84,250 in "other federal receipts."¹⁴ These receipts all came from
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4 alleges that Franklin and Lee is registered at the same Virginia residential address as Patriots and
5 was formed three weeks before it began contributing to Patriots.¹⁷ The Complaint questions how
6 Patriots was able to acquire \$84,250 in other federal receipts when it otherwise had not received
7 any contributions.¹⁸ The Complaint further alleges that Franklin and Lee is a shell organization
8 that was formed to obfuscate Patriots' donors.¹⁹

9 Patriots responds that its 2015 Year-End Report was accurate and that Patriots received
10 no receipts or disbursements in 2015.²⁰ Patriots admits that its 2016 April Quarterly Report
11 contained an "administrative error" because it reported the \$84,250 it received from Franklin and
12 Lee during that quarter on the line for other federal receipts (line 17) instead of the line for
13 contributions (line 11(a)).²¹ Patriots corrected the error after the Complaint was filed.²²
14 Franklin and Lee's Response asserts that the Commission lacks jurisdiction over it because the

¹⁴ *Id.*; 2016 April Quarterly Report, Patriots for America (Apr. 13, 2016).

¹⁵ *See id.*

¹⁶ *See* Resp. of Patriots for America and Adam McLain in his capacity as treasurer ("Resp. of Patriots for America") at 4-5 (Sept. 2, 2016); State of Delaware Certificate of Incorporation, Franklin and Lee, Inc. (Dec. 18, 2015).

¹⁷ *Compl.* at 2-3.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 2-3.

²⁰ *See* Resp. of Patriots for America at 2.

²¹ *See id.*

²² *See id.*; Amend. 2016 April Quarterly Report, Patriots for America (July 12, 2016).

1 Complaint did not name it as a respondent, does not allege facts that show that it violated the
2 Act, and does not provide sufficient notice of the allegations against it.²³

3 B. Legal Analysis

4 i. Alleged Reporting Violations

5 Political committees registered with the Commission must file reports disclosing their
6 receipts and disbursements.²⁴ The Complaint first alleges that Patriots failed to report its receipts
7 and disbursements during 2015.²⁵ Patriots' 2015 Year-End Report discloses that all of Patriots'
8 2015 activity was financed on credit.²⁶ Schedule D from that report named each creditor,
9 identified the amount that Patriots owed that creditor, and briefly described each debt.²⁷ In 2016,
10 Patriots disclosed contributions from Franklin and Lee,²⁸ which were used to pay most of that
11 debt.²⁹ The available information thus does not show that Patriots' 2015 activity was unreported.

12 By contrast, Patriots' original 2016 April Quarterly Report incorrectly reported Patriots'
13 contributions, totaling \$84,250, as "other federal receipts."³⁰ Patriots has since amended the
14 report to show the receipts as contributions.³¹ In light of the fact that Patriots disclosed the

²³ Resp. of Franklin and Lee, Inc. (Aug. 8, 2016).

²⁴ See 11 C.F.R. § 104.3. See also 52 U.S.C. § 30104.

²⁵ See Compl. at 2.

²⁶ 2015 Year-End Report, Patriots for America.

²⁷ *Id.*, Sched. D. See 52 U.S.C. § 30104(b)(8); 11 C.F.R. § 104.3(d).

²⁸ See Amend. 2016 April Quarterly Report, Patriots for America (July 15, 2016).

²⁹ Patriots' Post-General Report shows that it still owes a \$2,234.89 debt to Draper Sterling.

³⁰ See April Quarterly Report at 3, Line 17, Patriots for America (Apr. 13, 2016); Resp. of Patriots for America at 2.

³¹ See Amend. 2016 April Quarterly Report, Patriots for America (July 12, 2016).

1 activity, albeit on the wrong line, and later corrected the error, the Commission will exercise its
2 prosecutorial discretion and dismiss the reporting violation.³²

3 ii. Alleged Contributions in the Name of Another

4 The Act prohibits a person from making a contribution in the name of another, knowingly
5 permitting his or her name to be used to effect such a contribution, or knowingly accepting a
6 contribution made by one person in the name of another person.³³ The term "person" for
7 purposes of the Act includes partnerships, corporations, and other organizations.³⁴ The
8 Complaint alleges that the contributions to Patriots from Franklin and Lee were made in the
9 name of another because Franklin and Lee is a shell organization being used to conceal the
10 names of Patriots' contributors.³⁵

11 The facts here are unusual—Patriots registered and reported to the Commission, despite
12 focusing its activity solely on a state election, and did not register with or report to the state of
13 Missouri.³⁶ Further, Patriots financed its initial activity on credit and then paid its debt after
14 receiving contributions from one contributor, Franklin and Lee,³⁷ an entity formed by Patriots'

³² See *Heckler v. Chaney*, 470 U.S. 821 (1985). The Complaint also alleges that Patriots' \$56,234.89 debt to Draper Sterling for business consulting is "highly unusual" given Patriots' status as an independent-expenditure-only committee with no money, and alleges that the report on that transaction was either misleading or wrong. Such alleged "unusual" activity, with nothing more, does not provide sufficient reason to believe that Patriots reported false or misleading information.

³³ 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b).

³⁴ 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10.

³⁵ Compl. at 2-3.

³⁶ See *supra* n.7.

³⁷ See 2015 Year-End Report, Patriots for America; Amend. 2016 April Quarterly Report, Patriots for America (July 15, 2016).

1 treasurer whose first contribution to Patriots was made less than three weeks after it
2 incorporated.³⁸

3 Nonetheless, the Commission does not believe that this matter warrants further action.

4 The Act's prohibition on contributions in the name of another applies to independent-
5 expenditure-only political committees regardless of how the contributed funds are spent.

6 However, because Patriots spent its funds on a state, not a federal, election, the Commission will
7 dismiss the allegation that the Respondents violated 52 U.S.C. § 30122.³⁹

³⁸ Compare State of Del. Certificate of Incorporation, Franklin and Lee, Inc. (Dec. 18, 2015) with Amend. 2016 April Quarterly Report at 6, Patriots for America (July 15, 2016) (reporting that Franklin and Lee made its first contribution to Patriots on January 7, 2016, in the amount of \$23,000).

³⁹ The Commission believes that because Patriots focused its activity at the state level, the MEC is the most appropriate agency to address it. The Complainant in the matter filed a complaint with the MEC, *see supra* n.7, so the Commission does not believe it is necessary to report this matter to the MEC. *See* 52 U.S.C. § 30107(a)(9).